Holmes, J., dissenting, in *Vegelahn* v. *Guntner*, 167 Mass. 92, 104. Of course these justifications, while they excuse the infliction of some kinds of intentional damage, cannot excuse all. For example, they would not excuse direct torts against the person or property of the rival, nor preventing others from dealing with him by the use of violence or other means tortious as against them. See *Tarleton* v. *M'Gawley*, Peake 270.

To apply these principles to the subject in hand, it would seem that theoretically perfectly peaceful picketing would be justifiable. Such picketing is conceivable; but, as a practical matter, picketing generally is not, and from the nature of the circumstances cannot be, perfectly peaceful. The very presence of a picket usually contains a threat of violence. It is *per se* a tortious act as regards the prospective employees — an assault often accompanied by a battery. Therefore it should be actionable where there has been any damage to the prospective employer.

The ground of equity jurisdiction is clear. Irreparable damage is threatened, and there is a continuing injury, so that resort to the legal remedy would result in a multiplicity of suits. *Barr* v. *Essex Trades Council*, 53 N. J. Eq. 101, 126. It would be inadvisable to divide up the injunction so as to prohibit tortious actions and permit peaceful picketing on account of the difficulty which has been suggested of separating one from the other. Since, however, the granting of the injunction is largely in the discretion of the court, there would seem to be no reason why the court should not first look at the circumstances, and the general progress of the strike. If the strikers in all their dealings have been so fair and conciliatory that it is apparent that a picket established by them would be peaceful and friendly, though such a state of affairs may be rare, then the injunction might well be refused altogether. Otherwise the injunction should be granted.

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DAMAGES FOR TESTAMENTARY LIBEL. — The liability of a decedent's estate for libellous matter inserted by the decedent in his will is a subject which seems never to have attracted the attention of legal authors nor to have hitherto received adjudication. A probate court of Pennsylvania, however, has recently been called upon to determine this novel question. *In re Gallagher*, 49 Pitts. L. J. 161. The petitioner against the estate claimed damages for a libel upon him in the testator's will, the publication of the libel being by probate of the will. The court, after determining that the maxim — *actio personalis moritur cum persona* — has no literal application, is led to allow the action by a consideration of the great injury that the petitioner (an attorney) will suffer in his professional character by an imputation thus perpetuated in a public record. One's sympathy is strongly roused in behalf of the libelled claimant. Nevertheless it is impossible on any established theory of the law to support the decision, desirable as it is in its result.

If the libel had been published by the testator to the witnesses, for example, a cause of action would have arisen against him. But at common law this would have abated at his death. *Walters* v. *Nettleton*, 5 Cush. (Mass.) 544. And the statutory modifications of the old rule of abatement do not, except in a very few states, apply to the action of libel. See 21 CYC. PL. & PR. 349. But the publication complained of is

by probate so that no cause of action ever existed against the testator. Even if by a fictitious relation of time, such as a disseisee may invoke in bringing suits after re-entry, the publication be carried back to his lifetime, the objections of abatement still apply. To support the action, therefore, necessitates the conception of the deceased's estate as a legal entity, itself capable of committing a tort. Were such a conception justifiable the analogy of a corporation's responsibility for libel would permit the estate to be held. *Whitfield* v. *South Eastern Ry. Co.*, E., B., & E. 113. In the Roman law, it is true, the deceased's estate was considered a juristic person, though perhaps only as regards rights of property. WINDSCHIED, PAND., § 531. But such personification is completely foreign to the common law theory which deals with the estate through administrators and executors, and not as an artificial person. Unfortunate as the result may be, we are driven to the conclusion that the common law is powerless to recompense one damaged by testamentary libel. Its only weapon against this ingenious and infamous method of doing injury rests in the probate court's power to strike out the libellous matter, a power which courts seem reluctant to exercise. See *In the Goods of Honywood*, L. R. 2 P. & D. 251.

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PERFORMANCE IN IGNORANCE OF REWARD AS ACCEPTANCE OF OFFER. — The question as to whether or not the performance of the conditions of an offer in ignorance of that offer creates a binding contract is answered in contradictory ways in two distinct lines of decisions — one holding that the contract is completed the moment the claimant performs the prescribed services, even though he act without knowledge and consequently without any intention of acceptance, *Eagle* v. *Smith*, 4 Houst. (Del.) 293; *Dawkins* v. *Sappington*, 26 Ind. 199; the other holding that without knowledge of the offer there can be no acceptance nor contract, as the essential element of mutual assent is lacking. *Howland* v. *Lounds*, 51 N. Y. 604; *Chicago & A. R. R. Co.* v. *Sebring*, 16 Ill. App. 181. In the first class of cases the courts base their decisions on grounds of morality and public policy, and acknowledge the anomaly of such contracts, while in the second class the decisions as indicated are based wholly on the lack of mutual assent.

One of the grounds of decision in a late Illinois case involves a consideration of this point, the court holding that a claimant cannot recover, when he has given the required information either before the reward therefor is offered, or at a time when he is ignorant that any reward has been offered. *Williams* v. *West Chicago St. Ry. Co.*, 61 N. E. Rep. 456. The court argues that the right to recover a reward arises out of the contractual relation between offeror and claimant, implied by law, "the reason of the rule being that the services of the claimant are rendered in consequence of the offered reward, from which an implied promise is raised on the part of the person offering the reward to pay him the amount thereof;" and that no such promise can be implied unless the claimant knew at the time of performance that the reward had been offered. It would seem that the decision in *Fitch* v. *Snedaker*, 38 N. Y. 248, relied upon in so many other decisions, and chiefly cited in the principal case does not involve the precise point in question. In *Fitch* v. *Snedaker*, *supra*, the claimant had performed before the reward was